



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

JUL -3 2012

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Article Number: 7005 3110 0000 5951 8854

Mr. Dave Curtin
Curtin Dairy, LP
9815 Shaul Road
Cassville, New York 13318

Re: In the Matter of: Curtin Dairy, LP
Administrative Order CWA-02-2012-3055

Dear Mr. Curtin:

The United States Environmental Protection Agency ("EPA"), Region 2, has made a finding that the above-named facility, Curtin Dairy, LP ("Respondent"), is in violation of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. §1311 for National Pollutant Discharge Elimination System ("NPDES") violations as described in the findings to this Administrative Order ("AO" or "Order"). Enclosed are two (2) originals of this Order, issued pursuant to Sections 309 and 308 of the Act, which detail the findings.

Please acknowledge receipt of this Order on one of the originals and return it by mail in the enclosed envelope. Failure to comply with the enclosed Order may subject the facility to civil and/or criminal penalties pursuant to Section 309 of the Act. Compliance with the terms of this Order shall not preclude EPA from initiating an administrative or judicial enforcement action to recover penalties for any violations of the CWA, or seek additional injunctive relief, pursuant to Section 309 of the CWA, 33 U.S.C. §1319.

For your information, I am enclosing an Information Sheet which may be helpful in obtaining compliance assistance if you are a small business as defined at 13 C.F.R. §121.201, or if you wish to comment on this action to the Small Business and Agriculture Regulatory Enforcement Ombudsman and Regional Fairness Board. Should you have any questions concerning this matter, please feel free to contact Justine Modigliani, Compliance Section Chief at (212) 637-4268 or Kimberly McEathron, of my staff, at (212) 637-4228.

Sincerely,

Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

Enclosures

1. Order
2. Inspection Report
3. Information for Small Business

cc: Joseph DiMura, P.E., Director, Bureau of Water Compliance Programs, NYSDEC
Steven Botsford, Regional Water Engineer, NYSDEC Region 6
Michael Bocchi, NYSDEC Region 6 (electronic)
Tim Wimmer, Oneida County SWCD (electronic)

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

IN THE MATTER OF:

Curtin Dairy, LP
9815 Shaul Road
Cassville, New York 13318

Proceeding pursuant to Sections 308(a) and
309(a) of the Clean Water Act, 33 U.S.C.
§§1318(a) and 1319(a)(3)

**ADMINISTRATIVE
COMPLIANCE ORDER**

CWA-02-2012-3055

The following Findings of Violation are made, and Order for Compliance ("Order") issued, pursuant to Sections 308(a) and 309(a)(3) of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. §§1318(a) and 1319(a)(3). This authority has been delegated by the Administrator of the United States Environmental Protection Agency ("EPA") to the Regional Administrator, EPA Region 2, and since further redelegated to the Director, Division of Enforcement and Compliance Assistance, Region 2, EPA.

A. Legal Authority

1. Section 301(a) of the Clean Water Act, 33 U.S.C. §1311(a), prohibits the discharge of pollutants from a point source into waters of the United States, except in compliance with, *inter alia*, Section 402 of the CWA 33 U.S.C. §1342.
2. Section 402 of the CWA, 33 U.S.C. §1342, provides that pollutants may be discharged only in accordance with the terms of a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to that Section.
3. Section 402 of the CWA, 33 U.S.C. §1342, authorizes the Administrator of EPA to issue a NPDES permit for the discharge of any pollutant, or combination of pollutants subject to certain requirements of the CWA and conditions which the Administrator determines are necessary. The New York State Department of Environmental Conservation ("NYSDEC") is the agency with the authority to administer the federal NPDES program in New York pursuant to Section 402 of the CWA, 33 U.S.C. §1342. EPA maintains concurrent enforcement authority with authorized states for violations of the CWA. Additionally, under the authority granted to the NYSDEC by the EPA under Section 402(b) of the CWA, 33 U.S.C. §1342(b), a State Pollutant Discharge Elimination System ("SPDES") permit is required to be issued to facilities by the NYSDEC for the discharge of pollutants from said facilities from a point source to a navigable water of the United States.
4. The Administrator of EPA has promulgated regulation 40 C.F.R. §122.23(a), which requires operators to obtain a NPDES permit for discharges or potential discharges associated with Concentrated Animal Feeding Operations. The regulations at 40 C.F.R. §122.23 establish requirements for discharges associated with Concentrated Animal Feeding Operations, including all animals or the production of those animals, regardless of the type of animal.

5. "Pollutant" is defined by Section 502(6) of the CWA, 33 U.S.C. §1362 to include, *inter alia*, biological materials and agricultural waste discharged to water.
6. "Point source" is defined by Section 502(14) of the CWA, 33 U.S.C. §1362 to include "any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation ... from which pollutants are or may be discharged."
7. "Waters of the United States" are defined in 40 C.F.R. §122.2 to include intrastate rivers and streams, and tributaries thereto.
8. An "animal feeding operation" or "AFO" is defined by 40 C.F.R. §122.23(b)(1) as a lot or facility where animals have been, are, or will be stabled or confined and fed or maintained for a total of forty-five (45) days or more in any twelve-month period, and where crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.
9. A "concentrated animal feeding operation" or "CAFO" is defined by 40 C.F.R. §122.23(b)(2) as an AFO that is, *inter alia*, a medium CAFO.
10. A "large CAFO" is defined by 40 C.F.R. §122.23(b)(4)(i) as an animal feeding operation that stables or confines as many as or more than 700 mature dairy cows, whether milked or dry.
11. "Process wastewater" is defined by 40 C.F.R. §122.23(b)(7) as water directly or indirectly used in the operation of the AFO for any or all of the following: spillage or overflow from animal or poultry watering systems; washing or cleaning or flushing pens, barns, manure pits, or other AFO facilities; direct contact swimming, washing, or spray cooling of animals; or dust control. Process wastewater also includes any water which comes in contact with any raw materials, products, or byproducts including manure, litter, feed, milk, eggs or bedding.
12. "Production area" is defined by 40 C.F.R. §122.23(b)(8) as that part of an AFO that includes the animal confinement area, the manure storage area, the raw materials storage area, and the waste containment areas.
13. The terms "CAFO General Permit" or "Permit" mean the NYSDEC SPDES General Permit for Concentrated Animal Feeding Operations issued by NYSDEC, pursuant to Section 402 of the CWA. NYSDEC issued SPDES General Permit for Concentrated Animal Feeding Operations (GP-04-02) on June 24, 2004. The permit became effective on July 1, 2004 and expired on June 30, 2009 and has been administratively extended. The current permit (GP-04-02) supersedes the previous SPDES permit (GP-99-01) which was issued on June 18, 1999 with an effective date of July 1, 1999 and an expiration date of June 30, 2004.

B. Factual Background

1. Dave Curtin, doing business as Curtin Dairy, LP ("Respondent"), owns and operates an animal feeding operation located at 9815 Shaul Road, Cassville, New York ("Facility").
2. On November 25, 1999, Respondent obtained coverage under the NYSDEC SPDES General Permit for Concentrated Animal Feeding Operations, GP-99-01 (NYA000048). When the

CAFO General Permit was re-issued on June 24, 2004 with an effective date of July 1, 2004, Respondent permit coverage was automatically renewed.

3. EPA conducted a Compliance Evaluation Inspection ("CEI") of the Facility on May 2, 2012.
4. The Facility confines and feeds or maintains dairy cows for a total of forty-five (45) days or more in any twelve-month period, and neither crops, vegetation, forage growth, nor post harvest residues are sustained in the normal growing season over any portion of the lot or facility. Therefore, the Facility is an AFO as defined by 40 C.F.R. §122.23(b)(1), and as that phrase is used in Section 502(14) of the CWA, 33 U.S.C. §1362(14).
5. At the time of the inspection, the Facility was confining approximately 3,058 mature dairy cows, 342 heifers and calves and 200 to 300 beef cattle on-site. Therefore, the Facility is currently a large CAFO as that term is defined in 40 C.F.R. §122.23(b)(4)(i).
6. Production area runoff from the Main Farm located at 9815 Shaul Road in Cassville discharges to the Unadilla River in the Chesapeake Bay watershed.
7. Production area runoff from the Beef Farm located south of the Main Farm at the southeast corner of Old State Route 8 on Mapledale Road in Cassville discharges to a tributary to the Unadilla River.

C. Findings of Violation

During the CEI on May 2, 2012, EPA observed the following violations of the Respondent's SPDES permit (NYA000048) as documented in the CEI report:

1. Section VII.A of the CAFO General Permit states Comprehensive Nutrient Management Plans ("CNMPs") are required to be prepared in accordance with "NRCS Conservation Practice Standard No. NY312". NY312 states the following:
 - a. Clean water shall be excluded from concentrated waste areas to the fullest extent practical. At 40 C.F.R. 122.42(e), the Federal CAFO Rule also specifies what a Nutrient Management Plan ("NMP") must address, at a minimum. Specifically, NMPs should ensure that clean water is diverted, as appropriate, from the production area (see 40 C.F.R. 122.42(e)(iii)). At the time of the inspection, the following concentrated waste areas and production areas were exposed to stormwater inconsistent with CNMP requirements, in violation of Section VII.A of the CAFO General Permit:
 - i. Feed at the feed loading areas adjacent to Barns #1, #2, #3 and the Dry Cow Barn at the Main Farm;
 - ii. Sand piles containing manure located on concrete north of the Dry Cow Barn and sand piles containing manure in a sand storage area with three (3) concrete walls southeast of the sand/solid separation area at the Main Farm;
 - iii. The northern end of Bunk Silo #1 at the Beef Farm containing straw bales and silage;
 - iv. Concrete washout waste south of Bunk Silo #1 at the Beef Farm;
 - v. Storm drain located between the Dry Cow Barn and Barn #3 was partially covered with debris; and

- vi. Manure along the southeastern edge of Manure Storage Pit #1.
- b. Polluted runoff and seepage from concentrated waste areas shall be intercepted and directed to storage or treatment facilities for future disposal or be directly land applied to land in an acceptable manner. Polluted runoff from concentrated waste areas were observed at the following locations disposed in an unacceptable manner inconsistent with CNMP requirements, in violation of Section VII.A of the CAFO General Permit:
 - i. At the time of the inspection, a black liquid was flowing from the used sand piles containing manure northeast to a ditch. The black liquid converged with a white liquid from the Calf Barn wash room floor drain and flowed southeast through an unvegetated field ending approximately 1,000 feet from a culvert under Shaul Road that discharges stormwater to the Unadilla River.
 - ii. Stormwater from the northern portion of Bunk Silo #1 containing silage and uncovered straw bales flows into a ditch located between Bunk Silo #1 and the Beef Barn. This ditch continues southwest to a pipe culvert that keeps the stormwater runoff separate from the silage leachate collection system. The pipe culvert discharges stormwater to a ditch located northwest of the Vegetated Treatment Area ("VTA"). At the time of the inspection, approximately half of the pipe culvert was covered with deposited sediment on the downstream end. The ditch which lacked vegetation continues southwest and then bends south along the outside of the VTA. At the time of the inspection, this ditch terminated approximately 75 feet from the wetland located south of the VTA.
- 2. Section X.G of the CAFO General Permit requires the permittee to at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the permit. At the time of the inspection, inadequate operation and maintenance was observed at the following locations in violation of Section X.G of the CAFO General Permit:
 - a. A vegetation kill zone extending from the high flow discharge pipe and level lip spreader south through the VTA;
 - b. A second vegetation kill zone extending from the unvegetated bank of the southwestern end of Bunk Silo #2 southwest into the VTA;
 - c. Solids accumulated in the southwest corner of the Manure Storage Pit #1;
 - d. Areas lacking vegetation along the southeastern side of Manure Storage Pit #1;
 - e. Vegetation along all sides of Manure Storage Pit #1 was on average approximately 18 inches from the ground and in need of mowing;
 - f. The area immediately surrounding the Manure Storage Pit #2 was not vegetated and water was observed pooling along the northwestern and southern edges; and
 - g. A hole in the concrete wall and uneven concrete walls along the northwest side of Bunk Silo #1.
- 3. On the basis of the Findings cited above, Respondent is in violation of Sections 301 and 308 of the CWA, 33 U.S.C. §§1311 and 1318 and applicable implementing regulations.

D. Ordered Provisions

Based on the Findings of Violation set forth above, and pursuant to Sections 308(a) and 309(a)(3) of the CWA, 33 U.S.C. §§1318(a) and 1319(a)(3), Respondent is hereby ORDERED to take the following actions:

1. Respondent shall, immediately upon receipt of the original copies of this ORDER, have a responsible official of Curtin Dairy, LP complete and sign the acknowledgment of receipt of one of the originals of the ORDER and return said original to the Chief, Water Compliance Branch, in the enclosed envelope to the address listed below.
2. Respondent shall, immediately and no later than fifteen (15) calendar days after receipt of this Order, ensure that clean water is excluded from concentrated waste areas and the production area to the fullest extent practical at the following locations:
 - a. Feed at the feed loading areas adjacent to Barns #1, #2, #3 and the Dry Cow Barn at the Main Farm;
 - b. Sand piles containing manure located on concrete north of the Dry Cow Barn and sand piles containing manure in a sand storage area with three (3) concrete walls southeast of the sand/solid separation area at the Main Farm;
 - c. The northern end of Bunk Silo #1 at the Beef Farm containing straw bales and silage;
 - d. Concrete washout waste south of Bunk Silo #1 at the Beef Farm;
 - e. Storm drain located between the Dry Cow Barn and Barn #3 was partially covered with debris; and
 - f. Manure along the southeastern edge of Manure Storage Pit #1.
3. Respondent shall, immediately and no later than thirty (30) calendar days after receipt of this Order, properly operate and maintain systems of treatment and control in accordance with the CAFO General Permit and NRCS Standards, including but not limited to the following:
 - a. Establish and maintain vegetation in the Vegetated Treatment Area;
 - b. Establish and maintain vegetation at Manure Storage Pit #1;
 - c. Establish and maintain vegetation at Manure Storage Pit #2; and
 - d. Remove solids accumulated at Manure Storage Pit #2.
4. Respondent shall, no later than sixty (60) calendar days after receipt of this Order, intercept and direct all polluted runoff and seepage from concentrated waste areas including but not limited to the runoff from the used sand bedding piles and the Calf Barn wash room to storage or treatment facilities for future disposal or directly land apply in an acceptable manner in accordance with the CAFO General Permit and NRCS Standards.
5. Respondent shall, within seven (7) calendar days of completion of each of the Ordered Provisions 2, 3 and 4 above, provide written notification with accompanying photo documentation to EPA describing what steps were taken address each item.

E. General Provisions

1. This Order shall not constitute a permit under the CWA. Compliance with the terms of this Order shall not relieve Respondent of its responsibility to obtain any required local, state and/or federal permits.
2. Compliance with the terms of this Order shall not relieve Respondent of liability for, or preclude the EPA from initiating an administrative or judicial enforcement action to recover, penalties for any violations of the CWA, or to seek additional injunctive relief, pursuant to Section 309 of the CWA, 33 U.S.C. §1319.
3. Nothing in this Order shall limit the EPA's right to obtain access to, and/or inspect Respondent's facility, and/or request additional information from Respondent, pursuant to Section 308 of the CWA, 33 U.S.C. §1318.
4. The EPA may subsequently amend this Order in accordance with the CWA. For example, the EPA may amend this Order to address any non-compliance with the CWA, including but not limited to any non-compliance with the requirements of Section 402 of the CWA. In the event of any such subsequent amendment to this Order, all requirements for performance of this Order not affected by the amendment will remain in full force and effect.
5. Respondent has the right to seek immediate judicial review of the Order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706. Section 706, which is set forth at <http://uscode.house.gov/download/pls/05C7.txt>, provides the grounds for such review.
6. If any provision or authority of this Order or the application of this Order to Respondent is held by federal judicial authority to be invalid, the application to Respondent of the remainder of this Order shall remain in full force and effect and shall not be affected by such a holding.
7. All submissions to the EPA required by this Order shall be sent to:

Douglas McKenna, Chief
Water Compliance Branch
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency, Region 2
290 Broadway, 20th Floor
New York, NY 10007

and

Steven Botsford, Regional Water Engineer
NYSDEC Region 6
317 Washington St.
Watertown, NY 13601

8. Any written report sent to EPA in accordance with this Order will include the following statement:

I certify under the penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons gathering the information, I certify that the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of a fine and imprisonment for knowing violations.

9. Pursuant to 40 C.F.R. §§2.201-2.311, Respondent may assert a business confidentiality claim covering any portion of the submitted information which is entitled to confidential treatment and which is not effluent data. For any such claim, describe the basis for the claim under the applicable regulation. Any material for which business confidentiality is claimed should be placed in a separate envelope labeled, "Confidential Business Information." Failure to assert a claim in the manner described in 40 C.F.R. §2.203(b) allows the EPA to release the submitted information to the public without further notice. The EPA may disclose information subject to the business confidentiality claim only to the extent set forth in the above-cited regulations. Special rules governing information obtained under the Clean Water Act appear in 40 C.F.R. §2.302.
10. Notice is hereby given that violation of, or failure to comply with, any of the provisions of the foregoing Order may subject Respondent to a civil action in federal district court, pursuant to Section 309(b) of the Act, 33 U.S.C. §1319(b), for (1) civil penalties up to \$37,500 per day for each violation, and/or (2) other injunctive relief.
11. The terms of this Order shall be effective and enforceable against Respondent upon its receipt of the Order.

7/2/12
Date

B. R. M. G. for
Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF:

Curtin Dairy, LP
9815 Shaul Road
Cassville, New York 13318

Respondent

Proceeding pursuant to §309(a) of the Clean Water
Act, 33 U.S.C. §1319(a)

**ADMINISTRATIVE
COMPLIANCE ORDER**

CWA-02-2012-3055

**ACKNOWLEDGMENT OF RECEIPT OF
ADMINISTRATIVE COMPLIANCE ORDER**

I, _____, an officer of Curtin Dairy, LP with the title of,
_____, do hereby acknowledge the receipt of copy of the
ADMINISTRATIVE COMPLIANCE ORDER, CWA-02-2012-3055.

DATE: _____

SIGNED: _____